vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4974 OF 2001

Shri Balasaheb Maruti Poojari
123, Mundhwa, Pune-411 036 ... Petitioner

V/s.

1. Shri P.S. Narkar
Presiding Officer
First Labour Court, Pune

2. The General Manager
Department of Telecommunications
Telephone Bhawan
Bajirao Road Bhavan, Pune ... Respondents

Mr.K.S. Bapat i/b A.d. Patwardhan for Petitioner
Mrs.V.S. Masurkar for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 11, 2005**

JUDGMENT:

. This Petition challenges the order passed by the Labour Court, Pune rejecting the reference.

2. The Petitioner was employed with Respondent No.2 as a casual mazdoor from 22.5.1984. The Petitioner claims that his services were terminated on 28.2.1985, orally. On 21.3.1991, a certificate was issued by the Department stating that the Petitioner had rendered more than 240 days in service, continuously. The Petitioner raised an industrial dispute belatedly. In 1994, the

dispute was referred for adjudication before the First Labour Court at Pune. The Petitioner contended that his services had been orally terminated without following the due process of law. According to him, he should have been issued either a notice of one month or wages in lieu of notice, prior to terminating his services. Respondent No.2 contended that the Petitioner had worked for a period of 240 days. However, he had abandoned his service and therefore was not entitled to reinstatement.

3. The evidence of the Petitioner was led before the Labour Court. Respondent No.2 examined the Sub-Divisional Engineer. The Petitioner deposed in his evidence that he had worked continuously between 22.5.1984 and 28.2.1985 when his services were orally terminated. He has also deposed that other labourers working with him had been similarly terminated from service. One of them was made permanent on a subsequent date. He has also mentioned the name of the person who directed him not to report for duty after 28.2.1985. The witness examined on behalf of the Respondent-employer did not have any knowledge regarding the case and was examined only to produce certain documents on record.

4. By the award dated 1.6.2000, the Labour Court

held that the services of the Petitioner had not been illegally terminated. The Labour Court further held that the Petitioner had abandoned employment of his own accord. The Labour Court was of the view that since the Petitioner was a casual worker, his services could be dispensed with at any point of time. The Labour Court, therefore, rejected the Reference.

5. Mr.Bapat, learned Advocate for the Petitioner, submits that the award of the Labour Court is unsustainable since the Labour Court has not considered the issues framed by it in a fair and reasonable manner. He submits that once the Labour Court has held that Respondent No.2 had not proved that the Petitioner had abandoned the employment, the Labour Court ought to have held that the determination of service was on account of an illegal termination effected by Respondent No.2. He submits that once abandonment of employment has not been accepted, the only reason for cessation of employment would be by an overt act of the employer. Accordingly, he urges that the termination of service effected by the respondent was after the Petitioner had completed 240 days in service. Respondent No.2 was therefore, required to comply with the provisions of section 25F. Respondent No.2 having failed to comply with the conditions precedent namely, of payment of one month’s

notice wages or issuing one month’s notice to the Petitioner has illegally terminated his services.

6. Per contra, Mrs.Masurkar, appearing for Respondent No.2, submits that the Reference itself has been delayed for over nine years from the date of the alleged termination of service. Therefore, the Labour Court was right in dismissing the reference. She submits that the very fact that the respondent took no action till the Reference was made in 1994 after his termination from service in 1985 indicates that the respondent had abandoned the service and was not interested in employment with Respondent No.2. It is also submitted that the Petitioner was employed only as a casual labourer, as and when work was available with Respondent No.2; therefore, he could not claim to be in continuous service and much less asked for permanency with Respondent No.2. According to the learned Advocate, the Petitioner has agitated his claim only after a scheme for regularisation was approved under which the workman was required to complete a certain number of days in service, prior to regularisation. The learned Advocate then urges that the Petitioner could not have raised a dispute by rushing to the Assistant Labour Commissioner and filing a justification statement without raising a demand on Respondent No.2. She urges

that the writ petition should be dismissed. She places reliance on the judgment of a learned Single Judge of this Court in Writ Petition No.6370 of 2004 to submit that at best, the Reference should be remanded and the Labour Court should be directed to consider the matter afresh.

7. The submission of the learned Advocate for the Respondent that the Reference itself was not maintainable on account of the inordinate delay of 9 years in raising the dispute cannot be accepted at this stage. Admittedly, Respondent No.2 has not challenged the Reference when it was made. Although before the Labour Court Respondent No.2 had pleaded that the Reference should be dismissed on account of the inordinate delay, the Labour Court has dismissed it on other grounds. The aspect of delay has not been considered by the Labour Court. In Writ Petition NO.6370 of 2004, a similar situation arose where the workman in that case was employed as a casual labourer upto 31.3.1985 by the employer i.e. Respondent No.2 in this case. Several contentions were raised on behalf of the employer in that case, including the ones raised in the present petition. While considering the submissions, evidence and the law cited at the bar, the learned Single Judge has held that there appeared to be

a belated or stale claim. The learned Single Judge was therefore, pleased to remand the matter for a fresh hearing. In the present petition, there are no cross objections raised by Respondent No.2 to contend that the Reference itself was not maintainable. Therefore, I do not see any reason as to why the respondent should be permitted to seek a remand on that ground. Writ Petition No.6370 of 2004 was filed by the Employer-Respondent No.2 herein.

8. As regards the submission that there was no employer-employee relationship and that the Petitioner was employed only as a casual labourer, the Labour Court has concluded on evidence before it that the petitioner had established that he was working with Respondent No.2. It is also found by the Labour Court, on evidence that the Petitioner had worked continuously for a period of 240 days. These findings of the Labour Court have not been challenged by Respondent No.2. Therefore, they have attained finality.

9. The submission of the learned Advocate for the Respondent that a complaint or a justification statement filed before the Assistant Labour Commissioner must be preceded by a demand raised on the employer is also without any merit. It is trite law that the filing of a

justification statement before the Assistant Labour Commissioner is in itself a dispute raised and would constitute a demand upon the employer. Under the Industrial Disputes Act, there is no specific provision for raising a demand on the employer by issuing a notice to him. Nor is there any provision stipulating that a justification statement must be preceeded by a notice to the employer. Apart from this, the Petitioner has stated in evidence that on several occasions, he sought employment from the officers of Respondent No.2 which was denied. Left with no other recourse, he approached the Assistant Labour Commissioner. In my view, the Reference cannot be dismissed on this ground.

10. The question therefore, is whether the award is sustainable.

11. Once the Labour Court had held that there was no abandonment of service, it was necessary for the Labour Court to consider whether the Petitioner’s services were illegally terminated. For this purpose, the Labour Court accepted the admission of the respondent that the Petitioner had worked continuously for a period of 240 days between 22.5.1984 and 28.2.1985. However, the Labour Court was of the view that since he was a temporary workman, there was no need to issue any notice

of termination or tender wages in lieu of notice. The Labour Court in my view, ought to have held that once a temporary workman has completed 240 days in service, it is necessary for the employer to issue a notice of termination or tender wages in lieu of the notice. Not having done so, the termination of the Petitioner is illegal.

12. However, in the present case, although the Petitioner is entitled to reinstatement in the position that he held earlier between 22.5.1984 and 28.2.1985, he would not be entitled to backwages since he has raised the dispute belatedly. The reference has been made only in the year 1994. The Petitioner has not indicated anywhere that he had approached the management expeditiously or that there was a delay in the Reference being registered. Hence, the Petitioner is not entitled to backwages from the period from 28.2.1985 when his services were terminated till the date on which the Reference was made in the year 1994.

13. However, the Petitioner would be entitled to reinstatement with continuity of service and backwages from the date of the Reference till reinstatement in service.